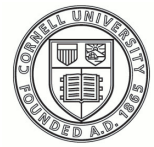

3-27-1996

State of New York Public Employment Relations Board Decisions from March 27, 1996

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from March 27, 1996

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WILLIAM J. BROEDEL,

Charging Party,

-and-

CASE NO. U-17331

SECURITY AND LAW ENFORCEMENT EMPLOYEES, COUNCIL 82, AFSCME, AFL-CIO,

Respondent.

-and-

STATE OF NEW YORK (STATE UNIVERSITY OF NEW YORK),

Employer.

WILLIAM J. BROEDEL, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by William Broedel to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his charge that the Security and Law Enforcement Employees, Council 82, AFSCME, AFL-CIO (Council 82) violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it refused his request to seek vacatur of a supplemental award of an arbitrator interpreting an earlier consent arbitration award. The Director notified Broedel that his charge was deficient. Broedel then filed an amendment to the charge. Finding that the charge remained deficient, the Director dismissed it as not setting forth facts sufficient to support a

finding that Council 82's decision not to seek to vacate the arbitration award was arbitrary, discriminatory or in bad faith. He further found that Broedel was without standing to file the charge because he was retired when he made the demand upon Council 82 and that certain allegations in his amendment were untimely.

Broedel's exceptions simply repeat the allegations set forth in his charge and amendment.

After a review of the record and a consideration of Broedel's arguments, we affirm the decision of the Director.

In 1993, Broedel was served with notices of discipline by the State of New York (State University of New York) (State), which sought his termination. Pursuant to an agreement reached by Council 82 and the State, Broedel agreed to retire from State employment and withdraw certain complaints he had filed against the State. The State withdrew the notices of discipline and agreed to pay Broedel one and a half times his annual salary, in two lump sum payments. This agreement was confirmed in a consent award issued by an arbitrator, who retained jurisdiction to ensure compliance with his order. Broedel alleges that the agreement was that the payments to him were to be "tax free". When he subsequently faced tax liability for some or all of the payments, he requested Council 82's assistance. Pursuant to Council 82's inquiries on Broedel's behalf, the arbitrator issued a supplemental award, finding that the original award, which he had drafted, had not contemplated a "tax free" payment and that,

in any event, he had no authority to resolve issues of Broedel's tax liability. Thereafter, Broedel requested that Council 82 seek to have the supplemental award vacated as being fraudulent and exceeding the arbitrator's authority. Council 82 declined to do so, advising Broedel that it considered the award to be final and binding.

Even assuming that Council 82 is under a duty of fair representation to Broedel,[1/] nothing in the charge as filed or amended evidences that Council 82's decision denying Broedel's request to seek to vacate the arbitrator's award was arbitrary, discriminatory or in bad faith. His request was reviewed by Council 82, he was timely advised of its reasons for denying his request and he has provided no facts which would evidence that Council 82 breached its duty of fair representation in reaching its decision.

To the extent that Broedel alleges in his amendment that Council 82 failed to adequately represent him in the disciplinary proceedings which led to the consent award, we affirm the Director's determination that the conduct to which that

---

[1/]The Director held that Council 82 owed no duty of fair representation to Broedel because, at all times relevant to the charge, Broedel was not a public employee within the meaning of the Act, having earlier severed his employment relationship with the State. Therefore, the Director found there was no violation of the Act as alleged because the statutory duty of fair representation runs only from an employee organization to the public employees it represents. Because of our finding herein, we need not reach this issue.

allegation relates occurred more than four months prior to the filing of the charge and is, therefore, untimely.

For the reasons set forth above, Broedel's exceptions are denied and the decision of the Director is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DANIEL THOMAS FRONCZAK,

Charging Party,

-and-

CASE NO. U-15023

NEW YORK STATE SECURITY AND LAW ENFORCEMENT EMPLOYEES, COUNCIL 82, AFSCME, AFL-CIO,

Respondent,

-and-

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Employer.

In the Matter of

DANIEL THOMAS FRONCZAK,

Charging Party,

-and-

CASE NO. U-15027

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Respondent.

DANIEL THOMAS FRONCZAK, pro se

CHRISTOPHER H. GARDNER, ESQ., for Respondent New York State Security and Law Enforcement Employees, Council 82

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD MCDOWELL of counsel), for Employer/Respondent State of New York Department of Correctional Services

BOARD DECISION AND ORDER

These cases come to us on exceptions filed by Daniel Thomas Fronczak to a decision of an Administrative Law Judge (ALJ) dismissing, pursuant to motion, his improper practice charges alleging that the New York State Security and Law Enforcement Employees, Council 82, AFSCME, AFL-CIO (Council 82) violated §209-a.2(a), (b) and (c) of the Public Employees' Fair Employment Act (Act) when it failed to file grievances on his behalf and that the State of New York (Department of Correctional Services) (State) violated §209-a.1(a), (b) and (d) of the Act when it discriminated against him for having filed grievances. At the close of the first day of hearing, at which Fronczak was represented by counsel, the ALJ adjourned the hearing sine die and requested an offer of proof from Fronczak as to what other evidence he would introduce in support of his claim that Council 82 had failed to process his grievances and that the State had retaliated against him for filing grievances. The offer of proof was requested because the evidence he had submitted did not support any violation of the Act and actually tended to exculpate both Council 82 and the State. After the offer of proof was submitted, both Council 82 and the State made motions to dismiss the charges. The ALJ, after a review of the transcript, the offer of proof, and the parties' briefs on the motion, granted the motions and dismissed both charges in their entirety.

Fronczak, appearing now pro se, reiterates in his exceptions the allegations made against Council 82 and the State in his improper practice charges. He claims that he has established the violations alleged and requests that the hearing be reopened. He also seeks to introduce new exhibits.[1/] The State, in its response to Fronczak's exceptions, claims that they are untimely and it otherwise supports the ALJ's decision. Council 82 has not filed a response to the exceptions.

After a review of the record and the parties' arguments, we affirm the decision of the ALJ.

Initially, we note that Fronczak's exceptions were filed within the time period required by the Rules of Procedure[2/] and Fronczak has provided proof that he also served the State and Council 82 within the required time. We, therefore, find the exceptions to have been timely filed.

Fronczak alleges that because he filed grievances complaining about safety on the job, he received a worse performance evaluation from the State than he had previously received, that the State had him psychologically and physically examined and, when he was found as a result of those examinations

---

[1/]We have not considered the additional exhibits submitted by Fronczak with his exceptions because they were not part of the record before the ALJ.

[2/]PERB's Rules of Procedure, §204.10, require that exceptions to a decision of an ALJ be filed with PERB, with proof of service on the other parties, within 15 working days of receipt of the decision.

to be unable to perform the essential functions of his position, placed him on involuntary leave of absence and, after a Civil Service Law (CSL) §72 hearing, terminated him. Council 82, he asserts, failed to file a grievance for him complaining of this retaliation by the State and, as a result, he was disadvantaged at his CSL §72 hearing,[3/] where he attempted to show that the finding that he was unable to perform his duties was made in retaliation for the filing of his first safety grievance.

There were four witnesses called by Fronczak to testify at the hearing. Craig Downing, the local president of Council 82 at the Wyoming Correctional Facility (Wyoming), where Fronczak served as a correction officer, testified that all grievances that he had received from Fronczak were processed according to the appropriate grievance procedures, including disciplinary, safety and evaluation grievances. He further testified that the grievance about which Fronczak complained, which was dated March 16, 1993, was never received from Fronczak and that he was unaware of it until October 1993, when he received a copy of it in a packet of information from Council 82's office of counsel. At that time, the grievance was untimely and, in any event, the issues raised in it had already been addressed in prior grievances. Crediting Downing's testimony and the evidence submitted by Fronczak detailing the handling of his numerous

---

[3/]Fronczak declined Council 82's offer to represent him at the CSL §72 hearing.

other grievances by Council 82, and finding that the offer of proof yielded no facts, which if proven, would establish a violation of the Act, the ALJ determined that Council 82 had not violated §209-a.2(a) and (c) of the Act by failing to process Fronczak's March 16, 1993 grievance.[4/]

As to the State, Fronczak offered no evidence in support of his allegations that the State acted out of anti-union animus and in retaliation for his filing of the safety grievances. The other witnesses Fronczak called to testify were his supervisor at Wyoming and two employees who had worked with him in Wyoming's infirmary. The ALJ found nothing in their testimony to even suggest anti-union animus on the part of the State. She also found that Fronczak's offer of proof likewise offered only conclusions without any facts in support of his allegations against the State. As a result, she dismissed the §209-a.1(a) and (b) allegations against the State.[5/]

Our review of the record and Fronczak's exceptions provides no basis to reverse the ALJ. Given the evidence Fronczak introduced at the first day of hearing, the ALJ properly exercised her discretion in requiring an offer of proof from him

---

[4/]As the duty to bargain occurs only between a public employer and the certified or recognized employee organization, Fronczak has no standing to allege a violation of §209-a.2 (b) of the Act and his charge in that regard was, therefore, properly dismissed.

[5/]Fronczak also has no standing to allege a violation of §209-a.1(d) of the Act because a violation of the duty to bargain in good faith may only be raised by the certified or recognized bargaining agent and his charge in that regard was properly dismissed.

before proceeding further.[6/] Having given Fronczak all reasonable inferences to be drawn from the evidence he introduced and his offer of proof,[7/] the ALJ correctly concluded that Fronczak failed to prove, and failed to allege any facts upon which it could be proven, that either Council 82 or the State violated the Act by their actions towards him.

Based on the foregoing, therefore, we deny Fronczak's exceptions and affirm the ALJ's decision.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

[6/] Nanuet Union Free Sch. Dist. and Nanuet Teachers Ass'n, 17 PERB ¶3005 (1984).

[7/] County of Nassau (Police Dep't), 17 PERB ¶3013 (1984).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, RENSSELAER COUNTY LOCAL 842, CITY OF TROY UNIT 8251,

Charging Party,

-and-

CASE NO. U-16707

CITY OF TROY,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (JANNA PFLUGER of counsel), for Charging Party

PETER KEHOE, CORPORATION COUNSEL (BRYAN J. GOLDBERGER of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the City of Troy (City) to a decision by the Director of Public Employment Practices and Representation (Director) on a charge filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rensselaer County Local 842, City of Troy Unit 8251 (CSEA). After a hearing, the Director held that the City violated §209-a.1(a) and (c) of the Public Employees' Fair Employment Act (Act) when its City Manager and other agents engaged in a general campaign of harassment against CSEA, its officers and members, which included disciplinary actions, actual and threatened changes in long-standing employment practices, changes in employees' work locations and a change in one

employee's hours of work.[1/] The Director concluded that all of these actions were taken for the purpose of interfering with, restraining, coercing or discriminating against employees for the exercise of various rights protected by the Act.

The City argues that the Director's decision is not supported by the record. It asserts that there is no proof that the actions in issue were taken in retaliation for the employees' exercise of statutorily protected rights. Rather, the City argues that the Director should have concluded on the record before him that the City acted in all respects for legitimate business reasons and consistently with its rights under the parties' collective bargaining agreement. CSEA argues that the Director's decision is plainly correct and should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the Director's decision.

The City called no witnesses. The testimony from CSEA's several witnesses was unrebutted and the Director credited that testimony. The record affords us no basis upon which to question, much less set aside, those credibility resolutions. As

---

[1/]Having found and remedied the violations of §209-a.1(a) and (c) of the Act, the Director did not decide the alleged violation of §209-a.1(d). No exceptions have been taken to the Director's declination to reach the alleged violation of §209-a.1(d) of the Act. In addition, the City has withdrawn that part of its exceptions pertaining to the Director's order regarding parking privileges for unit employees. The parties have notified us that they voluntarily settled that issue after release of the Director's decision. Therefore, although we affirm the Director's decision, we have not included any order pertaining to the employees' parking privileges.

more fully explained in the Director's decision, the record contains persuasive direct and circumstantial evidence of the City's improper motivation. The City's actions, the statements made by its agents, and the timing of those actions, all wholly unexplained and contrary to the City's long-standing labor and employment practices, lead inexorably to the conclusion reached by the Director. As the City's actions were improperly motivated, any question as to whether any of its actions were within the scope of its contract rights is immaterial in this proceeding because a party may not exercise a right for a reason unlawful under the Act. Finding the Director's decision to be fully supported by the record, we affirm his decision for the reasons set forth therein. The City's exceptions are, accordingly, denied.

IT IS, THEREFORE, ORDERED that the City immediately:

1. Rescind the notices of discipline issued to Janet M. Wisher on March 17 and 24, 1995, the notice of discipline issued to Joan Murray on March 17, 1995, and the notice of discipline issued to Robert Bloodgood on April 13, 1995.
2. Restore William G. Kelton to his 6:30 a.m. to 2:30 p.m. shift.
3. Restore Janet M. Wisher and Joan Murray to their work assignments in the Finance Department as those assignments existed prior to April 10, 1995.

4. Rescind and cease enforcement or implementation of the City's letter to CSEA dated March 23, 1995.
5. Rescind any orders prohibiting the conduct of all union business by employees while on City time and restore the practice in that regard as it existed prior to the prohibition.
6. Rescind the order to Finance Department employees prohibiting all nonbusiness communication during working hours between and among such employees and restore the practice in that regard as it existed prior to the prohibition.
7. Sign and post the attached notice at all locations used to post notices of information to employees in CSEA's unit.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the City of Troy (City) in the unit represented by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, Rensselaer County Local 842, City of Troy Unit 8251 (CSEA) that the City of Troy will immediately:

1. Rescind the notices of discipline issued to Janet M. Wisher on March 17 and 24, 1995, the notice of discipline issued to Joan Murray on March 17, 1995, and the notice of discipline issued to Robert Bloodgood on April 13, 1995.

2. Restore William G. Kelton to his 6:30 a.m. to 2:30 p.m. shift.

3. Restore Janet M. Wisher and Joan Murray to their work assignments in the Finance Department as those assignments existed prior to April 10, 1995.

4. Rescind and cease enforcement or implementation of the City's letter to CSEA dated March 23, 1995.

5. Rescind any orders prohibiting the conduct of all union business by employees while on City time and restore the practice in that regard as it existed prior to the prohibition.

6. Rescind the order to Finance Department employees prohibiting all nonbusiness communication during working hours between and among such employees and restore the practice in that regard as it existed prior to the prohibition.

Dated . . . . . By . . . . . .
(Representative) (Title)

CITY OF TROY

. . . . . .

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-15953

COUNTY OF NASSAU,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of counsel), for Charging Party

BEE & EISMAN (PETER A. BEE of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to a decision of an Administrative Law Judge (ALJ) dismissing, after a hearing, its charge that the County of Nassau (County) violated §209-a.1(d) and (e) of the Public Employees' Fair Employment Act (Act)[1/] when, on July 18, 1994, and again on January 1, 1995, it unilaterally reduced shift differential pay for certain unit employees.[2/]

[1/]CSEA amended its charge at the beginning of the hearing to include the alleged violation of §209-a.1(e).

[2/]CSEA had amended its original charge to add allegations of a violation by the County of §209-a.1(a) and (c) of the Act with respect to all civilian employees of the County's Police Department represented by CSEA and then to include the County's action on January 1, 1995, as to certain employees in the unit. The (a) and (c) allegations were withdrawn by CSEA at the start of the hearing.

CSEA represents civilian employees in the County's Police Department (Department). The employees are identified as being in one of four groups: Chart 7, Chart 12B, Fleet Services Bureau (Bureau) and Data Processing Department (Data Processing).

The County and CSEA were parties to an agreement which was effective from January 1, 1990 through December 31, 1992. Article 26, §26-1, of that agreement provided, as here relevant, as follows:

> A County employee, at least one-half of whose shift is between 4:00 p.m. and 8:00 a.m. shall receive additional shift differential for each hour actually worked, regardless of whether such hours are between 4:00 p.m. and 8:00 a.m.

The agreement further provides, also at §26-1, the dollar amount of the differential for each year of the agreement. In order to calculate the number of hours for which employees would be paid pursuant to §26-1, the County instituted in the 1970's a practice of utilizing a baseline, or averaging system, for the payment of the contractual shift differential amounts to Chart 7 employees. In each biweekly paycheck, Chart 7 employees were paid a baseline of fifty units (or hours) biweekly. The total amount of shift differential for the year was adjusted on December 31 of each year to reflect an additional payment for shift differential of approximately one to six additional days, depending on how many shifts each employee had actually worked during the year. From 1981, all Bureau and Data Processing employees were paid for a normal workweek, plus a shift differential based on a seventy-six hour baseline. When Chart 12B was created in February 1994,

three of those shifts were determined to qualify for the shift differential. A baseline of seventy-six hours per bi-weekly pay period was paid to qualifying Chart 12B employees.

On July 18, 1994, the County issued Order 118-94, advising civilian employees of the Department that, effective July 22, 1994, the shift differential baseline paid to Chart 7 employees would be reduced to forty-six units and the baseline for Chart 12B employees would be reduced to seventy units. On August 1, 1994, the parties ratified an agreement which extended and amended the expired agreement. The only alteration to §26-1 was to increase the dollar amount for each hour of shift differential for the years 1994, 1995 and 1996. Again, on January 5, 1995, the County reduced the baseline for Chart 7 employees to forty-four units and for Chart 12B employees to sixty-eight units.

The ALJ dismissed the charge in its entirety, finding that the County had not violated §209-a.1(e) because it had not refused to continue the terms of an expired agreement. She found that because the County still adjusted each employee's salary at the end of the year to pay eligible employees for hours actually worked at the shift differential rate, its change in the baseline, used for calculating, on a biweekly basis, the shift differential hours, was not violative of §209-a.1(e) of the Act because the baselines were not terms of expired §26-1. As to the Data Processing employees, the ALJ found that they were covered by §26-1 because their hours of work fell between 4:00 p.m. and 8:00 a.m., as referenced therein. Therefore, as with the Chart 7

and Chart 12B employees, there had been no violation of §209-a.1(e) when the County reduced the number of hours in the baseline.

Relying on an earlier decision by a different ALJ,[3/] the ALJ found that the Bureau employees were not covered by §26-1 and, therefore, there could not be any violation of §209-a.1(e) of the Act as to them. Moreover, she dismissed the charge as to the alleged §209-a.1(d) violation, finding that, although it had been established that the County had a practice of utilizing the baseline to calculate the shift differential for Bureau employees, the record did not establish that as to them there had been any change in the method of calculating or paying the shift differential.

CSEA excepts only to the ALJ's findings as to the Bureau and Data Processing employees, arguing that the record establishes that the noncontractual practice of paying both Bureau and Data Processing employees based on a baseline of seventy-six hours was changed by the County on July 18, 1994, in violation of §209-a.1(d); that the earlier decision relied upon by the ALJ covered the Data Processing employees also; and that it had established an extra-contractual practice as to the Bureau and Data Processing employees. The County supports the ALJ's decision.

[3/]In County of Nassau, 24 PERB ¶4535 (1991), the ALJ found that Bureau employees, because of the hours of their shifts, were not covered by §26-1. As the issues involved and the parties were identical in this case, the ALJ here determined that collateral estoppel applied. Accordingly, she rejected the County's argument that Bureau employees were covered by §26-1.

Based upon our consideration of the parties' arguments and a review of the record, we affirm the decision of the ALJ, although not for the reasons stated therein.

The charge was amended by CSEA at the hearing to allege a violation of §209-a.1(e) as to all affected employees in the four departments. We affirm the ALJ's finding that there is no violation of (e) by the County's adjustment of the baseline. There is no dispute that the County is still paying a shift differential to unit employees for the actual number of eligible hours worked pursuant to that contractual language and, therefore, there is no failure to continue the terms of the expired agreement.

The action complained of by CSEA which is not subject to §26-1, is the County's change in the practice of calculating the number of shift differential hours to be included in the bi-weekly paycheck of each employee. When CSEA filed its original charge alleging a violation of §209-a.1(d) of the Act, the only employees alleged to have been affected by the County's action were Chart 7 and Chart 12B employees. No exceptions were filed concerning the Chart 7 and Chart 12B employees and the charge as to them is not properly before us. CSEA's amendment to allege violations of §209-a.1(a) and (c) of the Act, which referenced all bargaining unit members, was withdrawn at the hearing. As pointed out by the County in its response to CSEA's exceptions, the charge was not amended at any time to allege a violation of §209-a.1(d) as to the Data Processing and Bureau employees.

Therefore, we affirm the dismissal of the charge as to the Data Processing and Bureau employees, but on the basis that there is no (d) violation alleged as to them.[4/]

Based on the foregoing, we deny CSEA's exceptions and affirm the ALJ's dismissal of the charge.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

[4/]We may not consider allegations which are not raised in the charge or in timely amendments to the charge. Arlington Cent. Sch. Dist., 25 PERB ¶3001 (1992).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WILLIAM A. FRISCH,

Charging Party,

-and-

CASE NO. U-17183

NEW YORK STATE PUBLIC EMPLOYEES FEDERATION, AFL-CIO,

Respondent.

WILLIAM A. FRISCH, pro se

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by William A. Frisch to a decision of the Director of Public Employment Practices and Representation (Director) dismissing his improper practice charge against the New York State Public Employees Federation, AFL-CIO (PEF). The charge alleged that PEF violated §209-a.2(c) of the Public Employees' Fair Employment Act (Act) when it refused to process his grievance to the arbitration step of the grievance procedure. Frisch was notified by the Director that his charge was deficient. In spite of a voluminous amendment filed in response to the deficiency letter, the Director found that the deficiencies remained uncorrected and dismissed the charge in its entirety.

Frisch's exceptions basically restate the allegations in his charge and assert that the Director's decision is in error.

Based upon a review of the record and consideration of Frisch's arguments, we affirm the decision of the Director.

Frisch's charge was filed on October 10, 1995. The Director found that the only allegation contained in the charge or amendment which fell within four months of the filing of the charge[1/] was a July 12, 1995 letter to Frisch from the chair of PEF's Grievance Appeals Committee explaining why PEF was declining to take to arbitration Frisch's grievance seeking restoration of partial accruals used for a Workers' Compensation injury. As to that allegation, the Director found that Frisch had failed to provide any facts which might establish that PEF acted in an arbitrary, discriminatory or improperly motivated fashion in reaching its decision. As we have often held, an employee organization has no duty to process every grievance or to take every grievance to arbitration and is entitled to a broad range of discretion in determining which grievances it will pursue and to what level.[2/] Here, PEF declined to process Frisch's grievance to arbitration and, in a timely fashion, it gave him a detailed written explanation of the reasons for its decision. While Frisch does not agree with PEF's position, he does not allege any facts in the charge, the amendment or the

---

[1/]PERB's Rules of Procedure, §204.1(a) require that an improper practice charge be filed within four months of the act alleged to be improper.

[2/]See, e.g., New York City Transit Auth. and Chapter 2, Civil Service Technical Guild, Local 375, AFSCME, AFL-CIO, 22 PERB ¶3028 (1989).

exceptions which would support a conclusion that PEF was arbitrary, discriminatory or acting in bad faith when it reviewed his grievance.

Based on the foregoing, Frisch's exceptions are denied and the Director's decision is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO, CITY OF GLENS FALLS UNIT OF WARREN COUNTY LOCAL 857,

Charging Party,

-and-

CASE NO. U-16561

CITY OF GLENS FALLS,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (STEVEN A. CRAIN of counsel), for Charging Party

BARTLETT, PONTIFF, STEWART & RHODES, P.C. (J. LAWRENCE PALTROWITZ of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO, City of Glens Falls Unit of Warren County Local 857 (CSEA) to a decision by the Assistant Director of Public Employment Practices and Representation (Assistant Director). After a hearing, the Assistant Director dismissed CSEA's charge against the City of Glens Falls (City) which alleges that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when, in 1994, it required a Waste and Sewer Maintenance Mechanic[1/] to drive a dump truck from the water treatment plant

---

[1/]The title was changed from Waste Water Plant Mechanic in 1991 pursuant to a survey of positions conducted by the Municipal Services Division of the New York State Department of Civil Service.

to a landfill to dump by-products of the water treatment process and to have the driver's license appropriate under law for that task.

The Assistant Director dismissed the charge because the requirements were part of a job specification[2/] issued pursuant to a Civil Service classification or reclassification, which is a nonmandatory subject of negotiation.[3/]

CSEA argues in its exceptions that the City was required to negotiate the driving and licensing requirements because the former is a task not even incidentally related to the employee's job and the latter is vague because it refers only to the "appropriate" license.[4/] CSEA also excepts to the Assistant Director's observation in a footnote to his decision that the City had reserved by contract the right to reclassify positions. The City argues that the Assistant Director's decision is correct and should be affirmed.

[2/]A revised job specification was issued, apparently, in 1991 at the time the job title was changed. This specification lists under "typical work activities" the following: "operates various types of equipment in connection with repair work; may operate a truck or other automotive equipment." It also carries as a "special requirement" the "possession of an appropriate level NYS driver's license . . . ." The former job specification did not contain those specific activities or the licensing requirement. The revised specification was not made known to the incumbent or to CSEA until the events in 1994 which gave rise to this charge.

[3/]Office of Court Admin., 12 PERB ¶3075 (1979)(subsequent history omitted).

[4/]There is no dispute that the current incumbent had the license necessary for legal operation of the City's dump truck even before the licensing requirement was added to the job specification.

Having reviewed the record and considered the parties' arguments, we affirm the Assistant Director's decision under our decision in State of New York (State University of New York at Binghamton)[5/] (hereafter State of New York), upon which all parties and the Assistant Director have relied, without reaching the classification question.[6/]

In Waverly Central School District[7/] (hereafter Waverly), it was held that job assignments which are either an essential aspect of an employee's basic employment function or in furtherance of tasks incidentally related thereto are nonmandatory subjects of negotiation, wholly apart from any issue of civil service classification or reclassification.

State of New York rests on Waverly. In State of New York, we held that the employer did not improperly refuse to negotiate when it required two employees to acquire a particular driver's license because their jobs reasonably required the operation of motor vehicles as an incident of their employment functions. The employer in that case was, however, required to negotiate the

---

[5/]27 PERB ¶3018 (1994).

[6/]The job specification is the specific basis for the City's duty assignment. The record, however, reveals little about the job specification beyond its written content. We do not know how the specification was prepared nor do we know whether it was issued by the State Department of Civil Service, by the local civil service commission or simply by an agent of the City as public employer. We, therefore, cannot conclude whether the addition of truck driving duties to the job specification occurred pursuant to classification. We accordingly do not adopt the Assistant Director's decision in this regard.

[7/]10 PERB ¶3103 (1977).

licensing directive as to one employee because that employee's job did not require the operation of a motor vehicle.

The question in this case, as we have framed it for review, is whether operation of a dump truck, to the extent currently required by the City for the removal from the plant of the by-products of water treatment, is inherently or incidentally part of the mechanic's job. If so, the City was under no statutory duty to negotiate either the driving or licensing requirement.

CSEA is correct in its argument that the mechanic's job, before and after reclassification of that position, is one involving the application of acquired trade skills. Driving a dump truck cannot be considered an inherent part of the mechanic's job. However, neither can the occasional driving of such a vehicle for the limited purpose in issue in this case be a task which is not even incidentally related to the performance of the job. The mechanic's job has always required the incumbent to assist "in a variety of other building and grounds maintenance tasks" and to perform "related work as required".[8/] The City is currently requiring the mechanic to haul to a landfill, approximately once per week, the silt and sand which are washed down through screens in the system and collected in the dump truck. Our decision is limited to this factual context. We make

---

[8/]The City and CSEA dispute whether some driving done by the mechanic in the past was pursuant to a required assignment or was undertaken voluntarily by the employee. The Assistant Director did not resolve this dispute and we need not either, given the basis for our decision. Even if the prior driving was voluntary, the particular driving task in issue in this case is within the scope of this position.

no decision as to whether driving of a different type, or for other purposes, or of the same type with significantly greater frequency, would be tasks incidentally related to the mechanic's job. We consider the driving being required of the mechanic to be a task incidentally related to the performance of his job because it is ancillary to the performance of the distinguishing features of the position and its typical work activities whether under the old or new job description. The silt and sand are by-products of the water treatment process, released automatically or pursuant to cleaning tasks for which the mechanic is clearly responsible. This type of driving is sufficiently "related" to the miscellaneous maintenance and repair duties of the mechanic as to fall within the mechanic's existing and former job description. As such, the driving assignment is not mandatorily negotiable. The licensing requirement is similarly nonmandatory under State of New York. As neither the driving nor licensing requirements are mandatorily negotiable, it is not necessary for us to reach the merits of the City's defenses grounded upon alleged contract rights.

For the reasons set forth above, CSEA's exceptions are denied and the Assistant Director's dismissal of the charge is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS DISTRICT COUNCIL 424,

Petitioner,

- and -

CASE NO. C-4493

SHOREHAM-WADING RIVER PUBLIC LIBRARY,

Employer.

RONALD CLEARY, for Petitioner

FRANK & BRESLOW, LLP (ALLEN B. BRESLOW of counsel), for Employer

BOARD DECISION AND ORDER

On December 4, 1995, the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Shoreham-Wading River Public Library (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: Clerk Typist, Library Clerks, Senior Library Clerks, Principal Library Clerks, Account Clerks, Senior Account Clerks.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS DISTRICT COUNCIL 424,

Petitioner,

- and -

CASE NO. C-4493

SHOREHAM-WADING RIVER PUBLIC LIBRARY,

Employer.

RONALD CLEARY, for Petitioner

FRANK & BRESLOW, LLP (ALLEN B. BRESLOW of counsel), for Employer

BOARD DECISION AND ORDER

On December 4, 1995, the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 (petitioner) filed, in accordance with the Rules of Procedure of the Public Employment Relations Board, a timely petition seeking certification as the exclusive representative of certain employees of the Shoreham-Wading River Public Library (employer).

Thereafter, the parties executed a consent agreement in which they stipulated that the following negotiating unit was appropriate:

Included: Clerk Typist, Library Clerks, Senior Library Clerks, Principal Library Clerks, Account Clerks, Senior Account Clerks.

Excluded: All other employees, and those confidential employees as set forth on attached page.[1/]

Pursuant to that agreement, a secret-ballot election was held on March 13, 1996, at which seven ballots were cast in favor of representation by the petitioner and seven ballots were cast against representation by the petitioner.[2/]

Inasmuch as the results of the election indicate that a majority of the eligible voters in the unit who cast ballots do not desire to be represented for the purpose of collective bargaining by the petitioner, IT IS ORDERED that the petition should be, and it hereby is, dismissed.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

1/ The reference was to an attachment to the parties' consent agreement.

2/ There are 14 employees in the stipulated unit.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNCIL 82, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-12374

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Respondent,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO and PUBLIC EMPLOYEES FEDERATION, AFL-CIO,

Intervenors.

CHRISTOPHER H. GARDNER, GENERAL COUNSEL, for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD W. McDOWELL of counsel), for Respondent

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of counsel), for Intervenor Civil Service Employees Association, Inc., AFSCME, AFL-CIO

RICHARD E. CASAGRANDE, GENERAL COUNSEL (JEFFREY G. PLANT of counsel), for Intervenor Public Employees Federation, AFL-CIO

BOARD DECISION ON MOTION

We issued a decision and order in this case on September 30, 1994.[1/] Council 82, AFSCME, AFL-CIO has moved to modify the remedial order entered in that case because it omits reference to the "Move/Control PMS post at Marcy". All parties have either

---

[1/] 27 PERB ¶3055 (1994)(appeal pending).

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNCIL 82, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-12374

STATE OF NEW YORK (DEPARTMENT OF CORRECTIONAL SERVICES),

Respondent,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO and PUBLIC EMPLOYEES FEDERATION, AFL-CIO,

Intervenors.

CHRISTOPHER H. GARDNER, GENERAL COUNSEL, for Charging Party

WALTER J. PELLEGRINI, GENERAL COUNSEL (RICHARD W. McDOWELL of counsel), for Respondent

NANCY E. HOFFMAN, GENERAL COUNSEL (JEROME LEFKOWITZ of counsel), for Intervenor Civil Service Employees Association, Inc., AFSCME, AFL-CIO

RICHARD E. CASAGRANDE, GENERAL COUNSEL (JEFFREY G. PLANT of counsel), for Intervenor Public Employees Federation, AFL-CIO

BOARD DECISION ON MOTION

We issued a decision and order in this case on September 30, 1994.[1/] Council 82, AFSCME, AFL-CIO has moved to modify the remedial order entered in that case because it omits reference to the "Move/Control PMS post at Marcy". All parties have either

---

[1/] 27 PERB ¶3055 (1994)(appeal pending).

consented to modification as requested or have no objection to it.

Our omission of a reference to this post was unintentional as we affirmed the finding of violation made in this respect by the Assistant Director of Public Employment Practices and Representation. Therefore, we grant Council 82's motion and, accordingly, hereby modify paragraph 1 of our order dated September 30, 1994 to provide as follows:

1. Forthwith reinstate ... the Move/Control PMS posts at Marcy, Mid-State, Oneida and Mohawk, ...

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUSQUEHANNA VALLEY EDUCATION SUPPORT STAFF ASSOCIATION, NEA/NY,

Petitioner,

-and-

CASE NO. C-4470

SUSQUEHANNA VALLEY CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Susquehanna Valley Education Support Staff Association, NEA/NY has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SUSQUEHANNA VALLEY EDUCATION SUPPORT STAFF ASSOCIATION, NEA/NY,

Petitioner,

-and-

CASE NO. C-4470

SUSQUEHANNA VALLEY CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Susquehanna Valley Education Support Staff Association, NEA/NY has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described

below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and regular part-time noninstructional employees in the classified civil service.

Excluded: Transportation Supervisor, Director of Facilities, Buildings and Grounds, School Wellness Coordinator, School Business Executive, Computer Coordinator, Computer Technician, Secretary to the Superintendent, Secretary to the Assistant Superintendent.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Susquehanna Valley Education Support Staff Association, NEA/NY. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,,

Petitioner,

-and-

CASE NO. C-4498

CITY OF COHOES,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time public safety dispatchers.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,,

Petitioner,

-and-

CASE NO. C-4498

CITY OF COHOES,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time public safety dispatchers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AMHERST PARAPROFESSIONAL ASSOCIATION, NYSUT,

Petitioner,

-and- CASE NO. C-4501

AMHERST CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Amherst Paraprofessional Association, NYSUT has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Teacher Aide, School Monitor, TV Technician and TV Technician Helper.

Excluded: All other employees.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AMHERST PARAPROFESSIONAL ASSOCIATION, NYSUT,

Petitioner,

-and- **CASE NO. C-4501**

AMHERST CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Amherst Paraprofessional Association, NYSUT has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Teacher Aide, School Monitor, TV Technician and TV Technician Helper.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Amherst Paraprofessional Association, NYSUT. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

DATED: March 27, 1996
Albany, New York

Pauline R. Kinsella, Chairperson

Eric J. Schmertz, Member